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The Need to Abolish Corrections

Fay Stender

THE NEED TO ABOLISH "CORRECTIONS"

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INTRODUCTION

When first asked by the editors of the *Santa Clara Lawyer* to submit an article for this issue, I intended to write on the topic: "The Continuing Lawlessness of Corrections and the Need for an Ombudsman." I had amassed voluminous files of information concerning injustices within the prisons. The accounts of prison atrocities reflected the apparent inability of the California Department of Corrections to assure inmates that injustices were being remedied. As my files continued to expand, however, the prison-reform movement appeared to be collapsing; what few prison organizations there were began to fragment and dissolve.[1]

The realization that analysis of the stubborn pervasiveness of the prison problem has continued to be inadequate as a guide to meaningful action and change, compelled a change in the focus for this article. Although many persons have called for the abolition of prisons as we know them, this admittedly radical suggestion has failed to produce any action. At best, it has promoted the idea that fewer persons should be confined in institutions and that prison terms should be shorter. Although the author agrees with the view that prisons should be abolished, as an expression of an ideal, this view offers no practical direction for effecting changes in the present system.

The central features of the prison system in California are its absolute power over prisoners' lives and its almost totally successful resistance to change. It is the author's present view that the main obstacles to change are the existence of the "corrections" system and the myths which surround it. This article discusses the need to abolish the "corrections" system as opposed to prisons and suggests a means by which this goal may be achieved.

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1. The Prison Law Project closed its Oakland office in June, 1973; Connections, another prison-reform organization located in San Francisco, announced its closing in February, 1974. Other organizations appeared to operate with diminished sense of direction.

THE PRISON SYSTEM AND ITS RESISTANCE TO CHANGE

The Injustices

The prison system, as it operates today, breeds injustices. Much of the correspondence this author has received from prisoners deals with their struggles to obtain vocational training materials or law books, their problems with routine medical and dental care, their loss of transcripts during transfer and cell searches, and the presistent problems of lock-up.[2] The following incidents are illustrative of the way in which the "corrections" system works in California prisons today.

For some months in 1973, San Quentin prisoner Lee Anthony Crosier attempted to secure permission to purchase a stenotype machine. His objective was to familiarize himself with the use and operation of this machine so that when paroled he would be able to enter the field of stenotype reporting. Initially Crosier's request was denied by Mr. L. E. Bolton, Acting Supervisor of Education at San Quentin, on the grounds that training in its use was not part of the Education Program (as administered by Mr. Bolton) and that stenotype machines were not on the approved property list of San Quentin Institution Order number 408.[3] Following this denial, Crosier appealed to the Prison Law Project attorneys for assistance. On October 29, 1973, in response to a letter from Crosier's counsel, pointing out the rehabilitative value of an inmate's taking the initiative to learn a trade, Mr. C. L. Swaggerty, the Associate Warden for Classification and Treatment, informed Crosier that he had permission to receive the stenotype machine, textbook and pad and that he should resubmit his request.[4] Crosier still was forced to overcome numerous administrative obstacles.

Finally, on November 26, he was able to fill out, for the first time, a special commissary purchase order for the machine. On December 5, Crosier wrote his attorney stating that he still had not received the stenotype shipment.[5] On December 7, Crosier informed his attorney that he had received the machine but not the pads,[6] which were indispensable to its operation. In addition, Swaggerty had examined the tripod on which the machine rested

2. "Lock-up" is a disciplinary tactic used by prison officials. During lock-up all prisoners are confined to their cells.

3. Memorandum from C.L. Swaggerty, Associate Warden, Classification and Treatment, California State Prison, San Quentin, to Lee Anthony Crosier, Oct. 29, 1973, on file at the office of the *Santa Clara Lawyer.*

4. *Id.*

5. Letter from Lee Anthony Crosier to Fay Stender, Dec. 5, 1973, on file at the office of the *Santa Clara Lawyer.*

6. Letter from Lee Anthony Crosier to Fay Stender, Dec. 7, 1973, on file at the office of the *Santa Clara Lawyer.*

and had declared that because its legs contained metal, making it possible for someone to fabricate a weapon out of them, they would have to be "modified" before Crosier could retain the tripod.[7]

On December 22, Crosier wrote to Warden Nelson complaining about incompetent handling of his request and asking that the special purchase order forms for the pads be properly processed.[8] In response to this request, the Sergeant in charge of Receiving and Release sent for Crosier, swore at him and threatened him with a "write-up."[9]

Months passed before Lee Anthony Crosier's initial attempt to obtain a stenotype machine bore any fruit. The policies and procedures of the Corrections Department served only to hamper his efforts. Crosier received his materials only after the passage of some twenty-five pieces of correspondence and after his attorney had accumulated a voluminous file on the matter. At this writing, Crosier's struggle to obtain additional pads and manuals of instruction continues.[10]

Mr. Crosier's experience is not unique; it is apparently a typical example of the way the corrections system works. An inmate in the prison at Soledad, in his attempt to obtain law books, had to confront obstacles similar to those faced by Crosier. A rule had been established at Soledad that a prisoner could have only three law books in his cell in maximum security at one time, and these were to be rotated at the mercy of the guards. No reason

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7. *Id.*

8. Letter from Lee Anthony Crosier to Fay Stender, Dec. 22, 1973, on file at the office of the *Santa Clara Lawyer.*

9. The Director of Corrections issues various disciplinary rules which are to be enforced in the prisons. It is the duty of any employee having knowledge of a violation of one of these rules to report the specifics of the violation in writing. This report, commonly called a "write-up," is given to either the Disciplinary Officer or the Disciplinary Committee at the particular institution where the violation occurred. If, after a review of the report, an inmate is found guilty of a rule violation,

> a disciplinary officer has authority, subject to the approval of the institutional head, to subject the inmate to: 1) counseling and/or warning, 2) reprimand, 3) temporary loss of one or more privileges, 4) one or more week-end holiday lockups, 5) assignment to a special work detail, and 6) confinement to quarters not to exceed 30 days. For more serious rule violations, the Disciplinary Committee may order any of the above dispositions plus: 1) permanent loss of one or more privileges, 2) confinement to an isolation cell, 3) recommendation to the Adult Authority, (or Women's Board of Terms and Parole) for appropriate action, and 4) recommendation to the Director of Corrections regarding forfeiture of earnings.

Comment, *Due Process in California Prison Disciplinary Hearings,* 5 U.C.D.L. REV. 384, 395 (1972).

10. Letter from Lee Anthony Crosier to Fay Stender, Apr. 5, 1974, on file at the office of the *Santa Clara Lawyer.*

was offered for this rule,[11] yet because of it the inmates in solitary confinement at Soledad were precluded from doing any extensive or meaningful legal research.

Yet another example of the injustice engendered by the prison system is the notorious confinement of Robert Charles Jordan, Jr. in a "strip cell" in the isolation section of the prison at Soledad.[12] In July, 1965, Jordan, a black prisoner in "O" Wing, was confined for twelve days in a "strip cell." The cell was completely dark and contained no furnishings except for a raised concrete commode which could not be flushed from within the cell.[13] During Jordan's confinement the strip cell was never cleaned. As a result of living in a continuous state of filth, Jordan often became nauseous and vomited; the vomit was never cleaned from his cell. He was compelled to sleep on the concrete floor. For the first eight days, Jordan was denied all clothing. For the entire period he had no means of cleaning his hands, body or teeth.

Jordan initiated a federal lawsuit against Soledad superintendent Cletus Fitzharris and other Soledad prison officials, claiming that his strip cell treatment violated his constitutional protection against "cruel and unusual punishment."[14] Judge George B. Harris, who heard the case, noted that,

> [w]hen, as it appears in the case at bar, the responsible prison authorities in the use of the strip cells have abandoned elemental concepts of decency by permitting conditions to prevail of a shocking and debased nature, then the courts must intervene—and intervene promptly—to restore the primal rules of a civilized community in accord with the mandate of the Constitution of the United States.[15]

Judge Harris emphasized that the "security officers made no effort to remedy the situation, notwithstanding persistent and violent complaints on the inmates' part."[16] He noted, however, that coincidental with the filing of this action by the plaintiff, "certain remedial conditions were established and maintained . . . ."[17] These remedial actions included providing the inmates in "strip cells" with water and personal hygiene materials, and installing

11. Letters from Mr. P.J. Morris, Deputy Superintendent, Correctional Training Facility, Central, Soledad, to Mr. Howard J. Berman, Dec. 10, 1973, and Dec. 17, 1973, on file at the office of the *Santa Clara Lawyer.*

12. *See* Stender, *The Closing of O Wing at Soledad Prison: Reflections on the Use of Lock-Up*, 45 MISS. L.J. 645 (1974) [hereinafter cited as Stender].

13. *See* Jordan v. Fitzharris, 257 F. Supp. 674, 685-87 (N.D. Cal. 1966) [photographs of strip cell].

14. Jordan v. Fitzharris, 257 F. Supp. 674 (N.D. Cal. 1966). *See* Stender, *supra* note 12, at 647.

15. 257 F. Supp. at 680 (citations omitted). Stender, *supra* note 12, at 647.

16. 257 F. Supp. at 680.

17. *Id.*

automatic flushing devices for the toilets.[18]

Judge Harris permanently enjoined the prison officials from subjecting prisoners to the cruel and unusual punishment given Jordan.[19] He held that if the defendants intended to continue to use the "strip cell," then its

> use must be accompanied by supplying the basic requirements which are essential to life, and by providing such essential requirements as may be neccessary to maintain a degree of cleanliness compatible with elemental decency in accord with the standards of a civilized community.[20]

The court did not attempt to specify the precise procedures that officials were to adopt if they were to meet the demands of the Constitution.[21] It relied on the discretion of the Soledad guards and administrators to choose appropriate remedies. Only minimal compliance resulted. In 1970, Robert Jordan assessed the effects of his lawsuit as follows:

> There were . . . slight physical adjustments to the mandate of the court order. The strip cells are still such that a human being should not be made to undergo incarceration in one. They are still dirty, . . . poorly ventilated, . . . poorly heated and in most cases the lighting provided is deliberately not turned on . . . . The open mouth toilets are still smelly and the inmate must still eat his food within the same space within five feet of the smelly nauseous fumes arising from the toilet.[22]

Crosier's struggle to obtain a stenotype machine, the rule restricting the use of lawbooks at Soledad, and Jordan's cruel confinement in the "strip cell" are but three examples of the thousands of injustices perpetrated by the prison system. The degree of cruelty which exists in the correctional system in California is astounding. It defies meaningful description except by tedious and painful repetition of horror story after horror story; the process becomes futile as one realizes that words alone cannot convey the enormity of the anxieties provoked by indifferent and sometimes sadistic handling of the lives and destinies of human beings within the system.

Resistance to Change

As noted earlier, the most prominent feature of the prison system in California is its resistance to change. In the early

18. *Id.* at 681.
19. *Id.* at 683.
20. *Id.*
21. *Id.*
22. MAXIMUM SECURITY, LETTERS FROM CALIFORNIA PRISONERS 147 (E. Pell ed. 1973). *See also* Stender, *supra* note 12, at 648.

1970s, the prison reform movement had gained a considerable following, and the media appeared to be acquiring a degree of sophistication in their analysis of prison injustices and problems.[23] Nevertheless, correspondence from prisoners told of the same incredible frustrations and anguish.[24] Correspondence from prison authorities evidenced little change in their mentality or attitude toward inmates; negativism and obsession with oppressive rules prevailed. The application of these rules continued to depend upon both the Director's ad hoc decision-making power and the interpretation given the rules by individual guards and prison administrators.[25] Lock-up continued to be the major penological tool, and, as unrest within the prisons increased, the authorities responded by ordering a total lock-up of four major northern California prisons on December 1, 1973.[26]

These unchanging cruelties take place in the context of the indeterminate sentence. Under this system of sentencing,[27] men are imprisoned by the Adult Authority's nine members and the prison personnel, who act as the Adult Authority's unofficial representatives, for torturously long and indefinite periods, extending

23. For a few of the large number of recent articles, *see, e.g.*, PSYCHOLOGY TODAY, Apr., 1974, at 30; N.Y. Times, Feb. 17, 1974, at 14-15; AMERICA, May 5, 1973, at 409-10; NEWSWEEK, Apr. 2, 1973, at 21-22; LIFE, Sept. 8, 1972, at 60-62; U.S. NEWS & WORLD REP., Mar. 3, 1972, at 32-37.

24. The Prison Law Project received correspondence from approximately 10,000 prisoners during the two and one-half years it was able to provide legal services to prisoners. These letters constitute a unique collection of prisoners' grievances. For further information on the collection, contact P.O. Box 1088, Berkeley, California 94701.

25. *See, e.g.*, letters from Lee Anthony Crosier to Fay Stender on file at the office of the *Santa Clara Lawyer*.

26. Total lock-up occurred at Deuel Vocational Institute, Soledad, San Quentin and Folsom. *See* San Francisco Chronicle, Dec. 2, 1973, at 1, col. 6.

27. The system of indeterminate sentencing in California is explained in *The California Adult Authority—Administrative Sentencing and the Parole Decision as a Problem in Administrative Discretion*, 5 U.C.D.L. REV. 360, 362-63 (1972) [hereinafter cited as *California Adult Authority*]:

> Under California's system of indeterminate sentencing, when a person is convicted of an offense for which imprisonment in state prison is prescribed by law, the judge may (1) with certain exceptions, place the person on probation, (2) grant a new trial, (3) suspend imposition of the sentence of, (4) sentence the person to imprisonment in state prison. If the court elects to sentence the person to state prison he may only sentence him "to the term prescribed by law." In imposing such a sentence the court is not allowed to fix the term or duration of the period of imprisonment.

The authority to determine and redetermine the length of the imprisonment is entrusted to the California Adult Authority, (former CAL. PEN. CODE § 3020 (West 1970)) and the Women's Board of Terms and Parole for Women (CAL. PEN. CODE § 6043 (West 1970)). In attempts to justify the indeterminate sentence it has been argued that "individualized sentences are fairer and better achieve the goals of criminal law than do determinate sentences imposed by a legislature" and "the Adult Authority, acting sometime after a defendant has been imprisoned, is better able to determine a man's readiness for release than is a judge at the time of sentencing." *California Adult Authority* at 360.

from six months to life. Courts have tolerated the indeterminate sentence in part because they have been persuaded, by the myth of "rehabilitation," that the Adult Authority, bolstered and advised by the psychiatric and custodial staff of the Department of Corrections, is in fact able to determine when a prisoner has been "rehabilitated."

It should be noted in this regard, however, that the California courts recently have placed the system of indeterminate sentencing under increased scrutiny.[28] The California Supreme Court has held that a sentence for the indeterminate period of one year to life, imposed for a second offense of indecent exposure, is cruel and unusual punishment and thus a violation of Article 1, section 6 of the California Constitution.[29] The court's decision, however, concerned only the particular indeterminate sentence at issue. The court specifically refrained from considering the validity of indeterminate sentencing in general, and, in fact, reiterated the rationale behind the indeterminate sentence adopted by many California courts:

> It is generally recognized by the courts and by modern penologists that the purpose of the indeterminate sentence law, like other modern laws in relation to the administration of the criminal law, is *to mitigate the punishment which would otherwise be imposed upon the offender.* These laws place emphasis upon the reformation of the offender. They seek to make the punishment fit the criminal rather than the crime. They endeavor to put before the prisoner great incentive to doing well in order that his will to do well should be strengthened and confirmed by the habit of well-doing.[30]

Through the perpetuation of the myth of reformation and rehabilitation, the sentencing powers, normally the responsibility of the courts, have been effectively delegated to nine political appointees, all of whom presently have law enforcement backgrounds.[31] The members of the Adult Authority thus are empowered to exercise almost total discretion to grant, deny (or

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28. *See, e.g., In Re* Lynch, 8 Cal. 3d 410, 503 P.2d 921, 105 Cal. Rptr. 217 (1972); People v. Romo, 39 Cal. App. 3d 326, 114 Cal. Rptr. 289 (1974); People v. Wade, 266 Cal. App. 2d 918, 72 Cal. Rptr. 538 (1968).

29. *In re* Lynch, 8 Cal. 3d 410, 503 P.2d 921, 105 Cal. Rptr. 217 (1972).

30. *Id.* at 416, 503 P.2d at 924, 105 Cal. Rptr. at 220 (emphasis in original).

31. The career backgrounds of Adult Authority members reflect their law enforcement biases: Raymond Brown, chairman, former Deputy Chief of Police, Oakland; Henry Kerr, former assistant Commander of the Los Angeles Police Department's Detective Bureau; Curtis Lynum, former head of the F.B.I., San Francisco Office; Walter Gordon, parole officer in the California Department of Corrections; Leland Edman, Deputy District Attorney in Fresno County; James Hoover, former Correctional Officer, C.D.C.; Charles Brown, retired Chief of Police of Richmond; Daniel Lopez, Correctional Officer and employee, Department of Human Resources; Manuel Quevedo, Director of Community Relations, San Bernardino, member of Alcoholic Beverage Appeals Board.

revoke) parole and thereby to determine a prisoner's sentence.

The Authority renders its decisions in camera, using sealed records compiled by prison guards and authorities. Until recently,[32] neither the prisoner nor his attorney was permitted to review these records. Panels of the Adult Authority, conducting hearings lasting from a few seconds to an hour or more decide whether a prisoner shall be paroled. Prior to the California Supreme Court's recent decision in *In re Sturm*,[33] the panels were not required to state the reasons for parole denials. Whenever the reasons were stated they were seldom specific, and included such catch-all phrases as "gravity of the offense," "inadequate adjustment," or "uncooperative attitude."

In spite of numerous lawsuits,[34] grievous complaints often quite eloquently expressed in prisoners' letters,[35] speeches by bar association presidents and chief justices,[36] and legislative hearings, conferences, and reports,[37] life for California's prisoners continues to be filled with terror. Inmates are still subject to frequent physical attack. They continue to suffer from inadequate medical and dental care. Further, they are painfully aware that voicing their grievances through court action or other channels of protest will likely bring reprisals in the form of write-ups, denial of parole, transfer to remote prisons, or lock-ups.

Prison practices have remained substantially unchanged despite the prison reform movement. The Department has hired a former Deputy Attorney General as a deputy director,[38] and while its public relations campaign has become more effective,[39] its practices have remained largely unchanged.

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32. See *In Re* Olson, 37 Cal. App. 3d 783, 112 Cal. Rptr. 579 (1974).

33. 11 Cal. 3d 258, 521 P.2d 97, 133 Cal. Rptr. 361 (1974). *Sturm* compels the Adult Authority to give written reasons for denial of parole.

34. Most of these lawsuits may be found in the Prison Law Reporter. *See, e.g.*, McGinnis v. Royster, 2 PRISON L. RPTR. 131 (1973); Martinez v. Procunier, 2 PRISON L. RPTR. 148 (1973); Brodkowicz v. Missouri, 1 PRISON L. RPTR. 158 (1972); Fisher v. Turner, 1 PRISON L. RPTR. 167 (1972); Hayes v. Secty. of Dept. of Public Safety, 1 PRISON L. RPTR. 166 (1972); Harris v. State, 1 PRISON L. RPTR. 192 (1972).

35. *See* MAXIMUM SECURITY, LETTERS FROM CALIFORNIA PRISONERS (E. Pell ed. 1973).

36. *See* Chief Justice Warren Burger, 1969 speech to American Bar Assoc. Convention, *quoted in* J. GOLDFARB & R. SINGER, AFTER CONVICTION 369 (1973); Burger, *No Man Is An Island*, 56 A.B.A.J. 325 (1970).

37. *Hearings on Corrections Before Subcomm. No. 3 of the House Comm. on the Judiciary*, 92d Cong., 1st Sess., ser. 15, pt. 2, at 153 (1971) [hereinafter cited as *Hearings*].

38. Mr. Nelson Kempsky was hired as deputy director of the Department of Corrections in 1973.

39. *See, e.g.*, letter from Mr. Kempsky to Fay Stender, Feb. 25, 1974, on file at the office of the *Santa Clara Lawyer*.

Everywhere prison reformers turn, they are frustrated by the bureaucracy of corrections. Corrections lobbyists have succeeded in defeating almost every prison reform bill introduced in the Legislature.[40] Whenever they have failed to block the passage of such legislation in the assembly or senate, the lobbyists have generally been successful in persuading the governor to veto it. This was the fate of the Ombudsman Bill, introduced by Assemblyman Murphy.[41] The bill was a moderate one, providing for civil servants to oversee grievances in the prisons. More recently, another attempt has been made to obtain approval of a similar bill.[42] This Ombudsman Bill would create a Joint Legislative Committee on Corrections Administration, which would have the power to nominate a person for the office of Ombudsman for Corrections by the vote of a majority of its members.[43] The nominee would then be appointed to the office by a concurrent resolution of the Legislature.[44] Under this bill, the Ombudsman would have had the power to establish procedures for receiving and processing complaints about prison conditions, conducting appropriate investigations and reporting his findings to the appropriate agency (*i.e.*, the department of corrections).[45] The Ombudsman also was to have responsibility for presenting his opinion and recommendation to the Governor, the Legislature and the public.[46]

Other prison reform bills have similarly met with defeat. Bills to provide counsel at parole hearings[47] or to limit the time a prisoner could be kept in solitary confinement[48] failed to reach the Governor's desk, but instead died in committee or on the floor of the Legislature at the urging of corrections lobbyists.

A further blow to the prisoners' rights movement has been the public insults hurled at their attorneys. False accusations concerning such attorneys have been sent to the State Bar, resulting in a series of petty restrictions and harassments.[49] None of these

40. In 1972, only two of 175 prison reform bills passed the California Legislature. *See* J.F. SMITH, LEGISLATION ON THE POLITICS OF PUNISHMENT (1973).

41. Cal. A.B. 5 (1972) (vetoed by Governor Reagan).

42. Cal. S.B. 1105 (1973) (amended in California Senate, May 31, 1973, and June 8, 1973).

43. *Id.* § 10702(b).

44. *Id.*

45. *Id.* § 10708.

46. *Id.* § 10718.

47. A.B. 2293, introduced in the California Assembly April, 1973, sponsored by Assemblyman Sieroty.

48. Adjustment Center Bill, A.B. 2904, S.B. 1610, introduced in the 1970 session of the California Legislature. *See also Hearings, supra* note 37, at 303-11.

49. These accusations were prominent in the litigation of *In re* Jordan, 7 Cal. 3d 930, 500 P.2d 873, 103 Cal. Rptr. 849 (1972). The charges against the attorneys involved attorney-client confidential mail rights. On October 2, 1972, the Attorney General of California filed a petition for rehearing, charging many

accusations was as grievous as the treatment meted out to the attorneys' prisoner-clients, but they were debilitating and destructive nevertheless.

Discouragement is replacing idealism for many active prison lawyers. Their litigation plods through the courts at a slow pace, and decrees obtained through months, sometimes years, of painstaking effort have proved difficult and sometimes impossible to enforce. What is difficult to explain is why the California prison experience for the prisoner is at least as bad as, if not worse than, before the public was made aware of the problem.

It was clearly naive to assume that merely by exposing the true conditions to the public, introducing intelligent legislation, and bringing appropriate lawsuits, the desired changes in our system of punitive incarceration could be produced. Before the public can fully appreciate the need for a solution, it must be made aware of the existence and nature of the problem. In this author's view, the major problem is the entire "corrections" system and specifically the myth which supports it—that it is inherently a "rehabilitative" system.

ABOLISHING "CORRECTIONS"

In the last decade, the California Department of Corrections has developed into a vast bureaucracy. It is responsible for the control and supervision of some 41,000 felony offenders and narcotics addicts under civil commitment.[50] Statewide the Department operates twelve major correctional institutions[51] with about 7500 career employees carrying out its work.[52] Each of the twelve correctional institutions is designed to handle a particular type of offender. There are maximum security prisons,[53] "minimum custody institutions"[54] which have no armed guards, special "medical psychiatric institutions"[55] and a treatment center for nar-

prison lawyers with knowing and wilful violation of certain regulations. The lawyers first learned of the accusations when they read about them in the newspapers. The Attorney General sent no copies of the petition to those being accused therein. The supreme court denied a rehearing.

50. General Information, California Department of Corrections 1, Mar. 1, 1974 (available from State Office Building #8, 714 P Street, Sacramento, California 95814).

51. *Id.*

52. *Id.*

53. Folsom Prison, Folsom, Calif., is considered the department's maximum security institution. Pattern of Change, California Dept. of Corrections, July, 1971 (available from State Human Relations Agency, Department of Corrections, Sacramento, Calif.).

54. The California Correctional Institution Tehachapi, Calif., has a 480-inmate minimum security unit. The California Institute for Men, Chino, Calif., has a 1,100 man minimum security facility. *Id.*

55. California Medical Facility at Vacaville, Calif. *Id.*

cotics addicts.[56] The program emphasized at each institution varies according to the type of inmates who are sent there.[57] The limited attempts by correctional personnel to provide inmates in these institutions with meaningful vocational training, academic education and counseling have proved largely unsuccessful. Often the correctional bureaucracy itself is the primary obstacle which prisoners must overcome in their attempts to obtain vocational and educational materials.[58]

It is evident that the problems presently plaguing the prisons are not being remedied by the corrections bureaucracy and, for prisoners like Lee Crosier, it often appears that the problems originate with the bureaucracy itself. In addition, the professionalized bureaucracy seems to preclude any meaningful reform within the "corrections" system. It is the author's suggestion that the present system be abolished and replaced with a more viable alternative.

Abolishing "Corrections"

Abolishing the "corrections" system involves numerous problems. The tenure and salaries of people employed by the bureaucracy must be protected. This is a difficult economic and human problem but one capable of solution. A more critical problem, however, lies in dispelling the concept of "corrections." It is necessary to destroy the myth that the corrections bureaucracy is specially equipped to determine when an offender has been rehabilitated or when a "difficult prisoner" is "unmanageable." The myth of rehabilitation has been primarily responsible for the complacency of judges, politicians, media investigators, and the public regarding the corrections system.

Jessica Mitford, for one, has suggested that the euphemistic names used by the Department of Corrections assuage the public conscience concerning the cruelties perpetrated upon prisoners.[59] By calling the punishment inflicted on prisoners "rehabilitation," "therapy," "adjustment," and more recently "behavior modification," our collective conscience has been willing to permit continuing abuses in our prisons. These euphemisms thus help to perpetuate the myth of "corrections."

No doubt there will be prisons and institutions of confinement for many years to come, despite the strides which are being

56. California Rehabilitation Center at Corona, Calif. *Id.*

57. For example, at one institution for young offenders concern is theoretically placed on vocational and academic training. *Id.* at 5.

58. *See* notes 3-11 and accompanying text *supra.*

59. J. MITFORD, CRUEL AND UNUSUAL PUNISHMENT, THE PRISON BUSINESS 97 (Kroff ed. 1973) [hereinafter cited as MITFORD].

made in diversion programs,[60] and the calls for elimination of victimless crimes.[61] Unfortunately, few societies exist absent some persons who can be classified only as "dangerous." Our society produces tragic numbers of mentally ill persons. These persons indicate that they are dangerous to others and themselves by performing acts of random personal violence. Although these people may comprise only a small portion of those presently incarcerated,[62] it seems clear that prisons will remain the primary means of confining them—at least until society allocates sufficient resources to analyze the problems and establish the institutions best suited for these people.

Although realistically we may not be able to mobilize the political power to abolish prisons, as a first step, we may be able to change the method of staffing these institutions. The following proposal is offered as a practicable and feasible alternative to the present "corrections" system.

An Alternative to "Corrections"

Prison guards should not be permitted to serve longer than one year. Preferably they should be hired from all walks of life. To be eligible to serve as a guard one should be in good mental health[63] and possess at least a high school education. Prison administrators should serve not more than three years and should be drawn from among those holding administrative posi-

60. *See, e.g.*, CAL. PEN. CODE § 1000-1000.4 (West Supp. 1973). The diversion program provides community placements for those charged in narcotic and drug abuse cases. Under the direction of the probation department these selected persons receive education, treatment or rehabilitation for periods varying from six months to two years. If the program of help is successful, the charges are dismissed at the end of the program. This program is open to those who have had no prior convictions and only in nonviolent offense situations.

61. For a representative sampling, see materials on file at Victimless Crime Project of Northern California, American Civil Liberties Union, 593 Market Street, San Francisco, California, 94105.

62. Perhaps one-tenth or less of the present prison population would be considered "dangerous." Dr. Frank Rundle, chief psychiatrist at Soledad in 1970-71, estimated that less than five percent of the population in the Adjustment Center there were "truly violent" types. *See In re* Hutchinson, 23 Cal. App. 3d 337, 100 Cal. Rptr. 124 (1972). (Affidavit of Frank Rundle, M.D., Exhibit 3 to Petition for Writ of Habeas Corpus in the Third Appellate District, therein numbered 3 Crim. 4328). *See also* Stender, *supra* note 12, at 646.

63. *See, e.g.*, screening procedure used by the San Jose Police Department to determine whether a person is of reasonably good mental health. A person applying for a position as a police officer on the San Jose Police Department must take a three-part examination. The first part is a written examination, the second an oral "stress" examination, and the third part consists of an interview with a psychologist. Questions directed to the various applicants by the officer and the responses given are studied to determine the applicants' prejudices, control-level and stability. Telephone interview with Ms. Pat Carpenter, Secretary to Dr. Michael Roberts, psychologist for the San Jose Police Department, Apr. 12, 1974.

tions in such institutions as hospitals, universities, business and industry. After completing their term as prison administrators, they should return to their former positions. No one should be permitted to become entrenched in a "corrections" career. The jobs in prison work should be acknowledged as unpleasant work which no one in society cares to perform—something akin to being drafted into the armed services.

Work in prisons generally has been performed by personnel with the lowest qualifications in the job maket. Most analysts believe that few prison employees could successfully compete with their counterparts in civilian life. An analysis of the occupational attainments of many of the employees in California's corrections department reveals these employees to be at one of the lowest occupational levels in the state.[64] I do not believe we can "upgrade" prison work. We must realize that the policing of prisoners will never be a prestigious occupation. Let us recognize it as a task which the inequities of our society have created and imposed upon us and try to rotate its unpleasant duties among the population.

Once we have established a new system of civilian guards, the vast literature of "corrections" can be recognized and acknowledged for the "gobbledygook" and "hocus-pocus" that it is. It should then become clear that the use of lock-up is the worst possible way to instill either respect for or understanding of the law. If on rare occasions a lock-up must be utilized, we should acknowledge that it is undertaken as a last resort. Lock-up should not be described as therapeutic or beneficial, nor should it be permitted for longer than thirty days without a court hearing. Often when violence occurs within a prison, the prisoners are confined within their cells for the ostensible purpose of protection. If the animosities now present in the prisons were ameliorated[65] by such a new system, no one's safety would rest upon long-term lock-ups in cages.

Obviously we cannot expect to achieve utopian results, particularly when we have been unable to make even a dent in the present system. By establishing a system of civilian guards, however, it may be possible to effect some significant changes. It may be possible to put an end to or at least minimize the intricate, complex games of control and sadism which have flourished within the present corrections bureaucracy. The guard-prisoner "game"

64. *See Hearings, supra* note 37, at 93. *See also* REPORT BY SENATOR JOHN A. NEJEDLY, STATE SENATE SELECT COMMITTEE ON PENAL INSTITUTIONS, UPGRADING CORRECTIONAL MANPOWER (Apr., 1972).

65. The proposals herein do not purport to provide a panacea. The hatreds and injustices will continue, but the excesses of prison cruelties may be reduced.

is vividly depicted in the experiment conducted by Dr. Philip Zimbardo, Professor of Psychology at Stanford University. To demonstrate the effect the prison experience has upon the prisoner and his guard, Zimbardo created a mock prison.[66] About two dozen men were selected to participate in the experiment. Presumably they were mature, emotionally stable, and intelligent college students from middle class backgrounds.[67] None had a criminal record.[68] Half were arbitrarily designated to assume the role of prisoners, while the rest were to serve as their guards.[69] The "guards" were allowed to devise their own rules for maintaining law, order and respect, and they were generally free to improvise new ones throughout the experiment.[70] Certain developments necessitated a termination of the experiment after only six days.[71]

> [S]ome boys ["guards"] were treating other boys as if they were despicable animals, taking pleasure in cruelty, while other boys ["prisoners"] became servile, dehumanized robots who thought only of escape, of their own individual survival, and of their mounting hatred of the guards.[72]

About a third of the guards tyrannically abused their power,[73] while some merely did their jobs as "tough but fair" correctional officers.[74] Several were "good guards" from the prisoners' point of view since they often performed favors for the prisoners and were generally friendly to them. However, no "good guard" ever interfered with a command by any of the "bad guards."[75]

The Zimbardo experiment demonstrated that the games of control emerge very early in the prisoner-guard relationship. Because this role-playing develops so quickly when one individual is given the task of "guarding" another, it is unlikely that deprofessionalization of prison personnel will eliminate entirely the sadism and repression which now exist in the prisons. Since the guards and administrators under the new system would be working in the prisons for at least one year, it is probable that some of the civilian guards, in time, would begin to abuse their power, as did one-third of the guards in the Zimbardo experiment. No doubt some of today's prison practices will be resurrected under such a system, but probably not to their present extent.

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66. *Hearings, supra* note 37, at 153.
67. *Id.*
68. *Id.*
69. *Id.*
70. *Id.* at 153-54.
71. *Id.* at 154.
72. *Id.*
73. *Id.*
74. *Id.*
75. *Id.*

The influx of new prison personnel each year should reduce the repressive activities presently being practiced by prison guards. The perspective of the civilian guard, who is working in the prison for only a temporary period, will differ considerably from that of the guard who has life-time employment in a prison. It is likely that the civilian guard will be more aware than a permanent guard of the standards which the law requires in the treament of prisoners. Because the civilian guards will return to their occupation in the outside world within the year, it follows that they will be less hardened to public criticism of the treatment of prisoners than are today's guards, who are able to hide behind their prison jobs for life.

The constant turn-over of personnel should minimize the militaristic nature of the prison bureaucracy, which is partially responsible for the abysmal conditions in today's prisons, and deprofessionalization should uproot the present prison mentality, characterized by resistance to change and insensitivity to the rights and humanity of prisoners.

"Corrections" can be abolished only after it is recognized that there is no "art" of corrections and no "science" of penology, but only an assemblage of secret, horrifying practices and a shamelessness which has characterized those individuals who have developed the ability to live in the corrections system as it presently functions. The euphemisms of "parole supervision" and "insight therapy," urged as effective tools of rehabilitation, have been exposed as anti-rehabilitative.[76] The misery and frustrations of prison life are recurrently expressed in eruptions of violence within our prisons; many inmates undergo years, even decades, of dehumanizing treatment. Although a few are fortunate enough to emerge with their hopes, intellect, and will to achieve intact, the majority of prisoners, when set free, are unable to adapt to a technological society without the skills which have been systematically denied them while they were in prison.[77]

How can we abolish "corrections"? First we must educate the public to the need for abolition. We must also explore the economic feasibility of placing the present members of prison bureaucracy in other positions in public employment.[78]

Next we must conduct studies which highlight the failures of the "corrections" system and analyze the low-level occupational

76. *See* MITFORD, *supra* note 59. *See also* J. GOLDFARB & R. SINGER, AFTER CONVICTION (Simon & Schuster ed. 1973).

77. I have seen some former convicts unable to dial a telephone, handle a car door or cross a crowded street without the utmost tension and psychic cost.

78. When separated from the corrections bureaucracy, many prison employees should make acceptably competent civil service workers, in ordinary work situations where they have no control over other's lives or personal liberties.

skills and perceptual talents of "corrections" personnel. Then, a coalition of legislators, educators, citizens, and media representatives must work for the passage of appropriate legislation to replace the present "corrections" system. Obviously the protests from the "corrections" establishment will be loud and its indignant representatives will importune the public to reject the abolition of their "profession." Perhaps as the corrections system seeks to find justification for its existence, and to demonstrate its good faith, it may even do less harm to the prisoners. But this would be a temporary situation and should not interrupt the move to abolish corrections.

Even after the rotational method of staffing the institutions is established, prisoners will still not want to be in prison and they will not enjoy their stay; they will not be happy, nor will they be free, but the layers of hypocrisy and the pretenses of "rehabilitation" will be removed. A new system of civilian temporary guards may encourage inmate organization and decisionmaking, permit prisoners to obtain decent academic and vocational training, and incorporate due process of the law into disciplinary and (parole) release hearings.[79]

CONCLUSION

With civilian guards serving limited terms, there will still be some sadism and repression in the guard/administrative force, but it should not become institutionalized to the same degree. There will still be some drug trafficking, some stabbings, occasional murders, tensions and misery, but there should be less crippling treatment and subsequent alienation of prisoners.

The institutions will be more open to the outside community because the administrators will not wish to isolate themselves from that community to which they must eventually return. The mores and perceptions of the administrators and guards will more clearly reflect those of the general public. The prison staff will no longer develop a secret morality, which differs radically from that of the general public. It will not be utopia, but it will be better. While I am generally pessimistic about prison change, I believe this proposal may be feasible, principally because correctional personnel are not held in high esteem by the American public. Most Americans appreciate the need for equal justice for all, though they may not know how to obtain it. I hope those who have reached an impasse in their thinking about prisons will now be encouraged to develop further the concept of the need to abolish "corrections."

79. Parole should be abolished but that is beyond the scope of this article.

Simultaneously, we should pursue the abolition of the indeterminate sentence. Sentencing should be returned to judges. Although trial judges also can be harsh, their colleagues, the bar, the appellate courts and our tradition of law should exercise restraint upon them. When we have modified or abolished the indeterminate sentence, expansion of the first amendment rights of prisoners and prison unionization are likely to follow. If a prisoner has a definite release date, which cannot be revoked, he is more likely to exercise his first amendment rights by forming a union or writing an article for a newspaper. Under the present system of sentencing, the exercise of these rights carries the risk of a prisoner's serving life in prison rather than obtaining parole the next year.

When a cannery is discovered to have botulism or poison in its products, it is closed until the cause is eliminated. There is presently a poison in our prison system, and we need not remain helpless to remedy the situation. We have floundered in well-intentioned attempts and have tried to use the channels of society which are theoretically appropriate to the redress of grievances and problems. But "corrections" has been impervious to court orders, media exposures, or complaints.

The prison support group, Connections, in a moving farewell message published in a recent newsletter indicated that prison reform may have been an idea whose time has passed. Hopefully the abolition of "corrections" is an idea whose time has come.